

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 621 OF 2005

Dildar Kumar Maity ..Appellant

vs.

The Municipal Corporation
of Gr. Bombay and ors. ..Respondents

Mr. Uday Warunjikar with Mr. Vipin Mishra for
appellant.

Mr.K.V.Shenoy, respondent no.2, party-in-person
present.

CORAM: B.H. MARLAPALLE, J.

Date : July 05, 2005.

P.C.:

1. Heard Mr. Warunjikar the learned counsel for the appellant-plaintiff who has filed L.C. Suit No.344 of 2005. Notice of Motion No.258 of 2005 has been rejected by the learned Judge of the City Civil Court at Mumbai vide his order dated 25/4/2005 and the said order is under challenge in this appeal.

2. The main question before the trial court was whether the plaintiff could show his entitlement to ask for an order of injunction against the defendants.

The Commissioner's report dated 29/1/2005 along with the photographs was available before the trial court. It has been specifically recorded that there was no brick masonry wall forming part of the suit premises. It was a black kadappa structure raised up to a height of 3 1/2 ft. An iron stand was simply put up before the Wine shop of respondent no.2. There is no evidence in support of the plaintiff's right to keep the iron stand in front of the shop. The plaintiff was carrying on the floweriest business and he claimed to have filed a suit before the Small Causes Court claiming his tenancy. In the said suit prayer for injunction was turned down. It was under these circumstances that the trial court noted that the plaintiff was not entitled for any injunction against the defendants.

3. While the appeal was pending the respondent-corporation has already lifted the iron stand/rack which was being used by the plaintiff for carrying out his business as a floweriest and thus the area in front of the Wine shop is now open. Mr. Warunjikar at this stage, on the basis of some

photographs, contends that even though the Corporation has removed iron stand/rack, the plaintiff continues to carry on his business on the same open space in front of the Wine shop of respondent no.2. If the subject area is part of public road or an open space which is not a private property, surely the plaintiff who does not possess any license issued by the Corporation would not be permitted to use the said open space. The trial court rightly considered the status of the plaintiff and refused to grant injunction against the defendants. The said order cannot be faulted with.

4. Hence, the appeal is dismissed in limine.

5. Prayer for continuing interim relief is hereby refused and as at present there is no such interim order operating.

(B.H. Marlapalle, J.)